FILED
OCT 10 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956

No. 499

ROBERT L. HOLCOMB, *Petitioner*

v.

THE UNITED STATES, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

CARL L. SHIPLEY,
982 National Press Building,
Washington 4, D. C.

SAMUEL RESNICOFF,
280 Broadway,
New York, N. Y.
Attorneys for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement of Case and Argument	2
Conclusion	6

TABLE OF CASES

Boone v. *Lightner*, 319 U.S. 516	5
Elder v. *Brannon*, 341 U.S. 277	5
Fishgold v. *Sullivan Drydock and Repair Corp.*, 328 U.S. 275	5
Stringer v. *U. S.*, 90 F. Supp. 375	4

STATUTES AND OTHER CITATIONS

5 U.S.C. 861	2
28 U.S.C. 1255	1
63 Stat. 377, 381	3
90 Cong. Record 3503:	
Sen. Report 907, 78th Cong., 2d Sess.	5
H. Report 1289, 78th Cong., 2d Sess.	5

IN THE

Supreme Court of the United States

October Term, 1956

No.

ROBERT L. HOLCOMB, *Petitioner*

v.

THE UNITED STATES, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Carl L. Shipley and Samuel Resnicoff on behalf of Robert L. Holcomb pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above captioned case on July 12, 1956, dismissing plaintiff's petition.

OPINION BELOW

The opinion of the court below is reported at page 1a of the Appendix hereto.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. 1255.

QUESTIONS PRESENTED

1. Whether the United States Court of Claims erred in holding that a civil service employee of the Federal Government on annual leave is not an employee within the meaning of the transfer of agency provisions of Section 12 of the Veterans' Preference Act?

STATUTE INVOLVED

Section 12 of the Veterans' Preference Act provides (5 U.S.C. 861):

> "* * * when any or all of the functions of any agency are transferred to, * * * some other agency * * * all preference employees in the function or functions transferred * * * shall be first transferred to the replacing agency, * * * for employment in positions for which they are qualified before such agency * * * shall appoint additional employees from any source for such positions."

STATEMENT OF CASE AND ARGUMENT

Petitioner is a veterans preference eligible with civil service status, who brought suit in the court below to recover back pay from March 31, 1949, to February 5, 1951, on the basis of an alleged wrongful separation from the War Assets Administration, and an alleged unlawful denial of transfer of position rights in the General Services Administration, in violation of Section 12 of the Veterans' Preference Act.

On March 15, 1949, the War Assets Administration notified petitioner that by reason of a reduction in force his last day of active duty would be March 31, 1949, and that after that day he would be carried in an annual leave status to December 23, 1949, and after that in furlough status through March 14, 1950.

On June 30, 1949, the War Assets Administration was transferred to the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381, which provides as follows:

> "TRANSFER FOR LIQUIDATION OF THE AFFAIRS OF WAR ASSETS ADMINISTRATION
>
> "SEC. 105. The functions, records, property, personnel, obligations, and commitments of the War Assets Administration are hereby transferred to the General Services Administration. The functions of the War Assets Adminstrator are hereby transferred to the Administrator of General Services. The War Assets Administration, the office of the War Assets Administrator and the office of Associate War Assets Administrator are hereby abolished." (Emphasis supplied)

On June 30, 1949, when the above transfer of functions took place, petitioner was an employee of the War Assets Administration in annual leave status as set forth hereinabove. At the time petitioner was placed on annual leave he held the position of Surplus Property Disposal Specialist, CAF-9, $5,106.60 per annum. He had held various positions in the Federal civil service for over fourteen years.

Under the provisions of Section 12 of the Veterans' Preference Act, petitioner had a legal right to be transferred to the General Services Administration for employment in any position for which he was qualified "before such agency * * * shall appoint additional employees from any other source." As set forth in petitioner's petition in the Court of Claims, the General Services Administration appointed new employees, without complying with Section 12 and restoring peti-

tioner to active duty. The defendant did not controvert petitioner's allegations, but simply took the position that petitioner, since he was on annual leave, was not an employee entitled to the benefits of Section 12 at the time War Assets Administration was transferred to and replaced by the General Services Administration. The court below held that petitioner was not an employee within the meaning of Section 12 by reason of his annual leave status on June 30, 1949. Judge Madden in his dissent to the decision of the Court of Claims put his finger on the error in the decision when he said "an employee on annual leave, even if he has received a notice that his employment and pay will be terminated at the expiration of his leave, is still a government employee, and is being paid only because he is a government employee. A normal reading of Section 12 would give him the rights created by that Section." At another point in his dissent, Judge Madden says "the Civil Service Commission held that because the plaintiff was not at work on June 30, 1949, the language of Section 12 gave him no rights. I see no reason for such construction of Section 12. It is not, after all, an interference with the freedom of management of administrators to say to them that if functions are transferred to their administration, those who have been performing those functions should get the jobs of performing them in the new agency."

It is obvious that the Court of Claims judgment places a narrow and restrictive construction on Section 12 of the Veterans' Preference Act. This construction will have far-reaching consequences on similarly situated veterans in the years to come. As stated in *Stringer* v. *U. S.*, 90 F. Supp. 375, "there is noth-

ing ambiguous about the Veterans' Preference Act. Rightly or wrongly, it was enacted by Congress in recognition of the great sacrifice of those who had an active part in our national defense at times when everything we cherished was at stake". Moreover, the narrow construction adopted by the Court of Claims is in direct contravention of the legislative purpose underlying Section 12 as disclosed in the proceedings in Congress. See *90 Congressional Record* 3503, Sen. Rept. No. 907, 78th Cong. 2d Sess., H. Rpt. No. 1289, 78th Cong. 2d Sess.; see also *Elder* v. *Brannon,* 341 U.S. 277. And apart from this, the Supreme Court of the United States has stated and restated the rule that veterans' legislation must be construed liberally. For example, in *Fishgold* v. *Sullivan Drydock and Repair Corporation,* 328 U.S. 275, it was held that veterans' legislation is "to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." The same rule of liberal construction of laws conferring benefits on those who have performed military service is stated in *Boone* v. *Lightner,* 319 U.S. 516. The decision of the Court of Claims in the case at bar does not meet the rule established by the Supreme Court. Contrarily, by a narrow construction of Section 12, the Court of Claims has effectively nullified a large portion of the benefits conferred on veterans by Section 12 of the Veterans' Preference Act. The consequences of its action will be far reaching, and this Court should review the decision below to insure that the mandate of Congress is carried out.

CONCLUSION

WHEREFORE, the premises considered, petitioner prays that his petition for a writ of certiorari be granted.

CARL L. SHIPLEY,
982 National Press Building,
Washington 4, D. C.

SAMUEL RESNICOFF,
280 Broadway,
New York, N. Y.
Attorneys for Petitioner.